Conflict Resolution in Water Resources: Two 404 General Permits

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Abstract: The use of alternative dispute resolution techniques in water resources is demonstrated and experience evaluated against current theory of bargaining and negotiating. Conflicts among environmentalists, developers, and government agencies are well known; they involve planning, constructing, operating, and regulating water resources projects. Two Section 404 permit cases are compared. One in 1980, involves issuing a general permit (GP) for wetland fill on Sanibel Island, Florida. The other, in 1987, involves issuing a GP for hydrocarbon exploration drilling throughout Louisiana and Mississippi. Generally, permits are granted on a case-by-case basis, but Corps district engineers may also issue GPs for activities that produce no negative cumulative impacts. In these cases the Corps adopted a revolutionary approach to GPs. Rather than writing the permit in house, the Corps suggested that the parties who conflict over permit applications get together and write the technical specifications for a GP. The Corps told environmentalists, citizens, contractors, industrialists, developers, and representatives of government agencies if they agree to the specifications of a permit within the broad legal constraints of the 404 law, the Corps would confirm the agreement and call it a GP. The price of such an agreement is consensus among the parties normally in conflict over permit applications. In this way the Corps becomes the facilitator of consensus among interested parties by using its authority. The Sanibel permit operated unchallenged for five years, the legal life of such a permit. The Mississippi/Louisiana permit was just issued. These cases both confirm and question some propositions emanating from the fields of negotiating and bargaining.

Introduction

This paper has two objectives: first, to demonstrate how alternative dispute resolution techniques can be used in water resources by looking at two cases; second, to evaluate the experience of these cases against current theory of bargaining and negotiations.

Conflicts among environmentalists, developers, and federal, state, and local agencies are well known. These conflicts involve planning, constructing, operating, and regulating water resource projects. In this paper I will compare two Section 404 permit cases. The first in 1980, is the issuance of a general permit (GP) for wetland fill on Sanibel Island, Florida (Lefkoff et al. 1983).

The second in 1987, is the issuance of a general permit for hydrocarbon exploration drilling throughout Louisiana and Mississippi. (The information in this paper concerning the Louisiana/Mississippi GP in the Vicksburg district is based on interviews with the Corps facilitators, Anna

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Schoonover and Peggy Holliday, and with the consultant to the project Dr. Merle Lefkoff). Under Section 404 of the 1972 Water Pollution Control Act, the U.S. Corps of Engineers grants individual permits for most forms of construction activities in wetlands such as drilling, filling land, and building dikes. Generally, permits are granted on a case-by-case basis but the law also allows Corps district engineers to issue general permits when the activities that will be conducted are similar and do not produce negative cumulative impacts.

On a national basis, the Corps program regulates activities that involve approximately 150,000,000 yd^3 of dredge material annually, and roughly 15% of the inorganic point source pollution in rivers of the United States. The programs jurisdiction includes roughly: 25,000 mi of navigable waterways, 3,000,000 mi of river, 124,000 mi of tidal shoreline, 4,700,000 mi of lakes shoreline, 30,000 mi of canal shoreline, and approximately 148,000,000 acres of wetlands. Together with its older Section 10 authorities for issuing permits in navigable waters, the Corps issues around 18,000 permits/year.

Even before the Reagan administration, the federal government has been seeking ways to streamline the permitting process and to reduce costs for the applicant while fulfilling its federal responsibilities for environmental protection. The Sanibel and Louisiana/Mississippi GPs demonstrate how the techniques of collaborative problem solving and mediation can help the Corps, and other federal agencies, meet these often conflicting objectives.

In both cases the Corps adopted what is still a revolutionary approach to general permitting. Rather than writing "in-house," the respective Corps districts, Jacksonville and Vicksburg, suggested that those parties who would probably conflict over individual permit applications, come together to write the technical specifications for a general permit. This was a revolutionary idea five years ago with the Sanibel GP and remains so today with the Louisiana/Mississippi GP.

The Corps said to environmentalists, citizens, contractors, industrialists, developers, and representatives of other federal, state, and local agencies, "If you could agree to the specifications of a permit within the broad legal constraints of the 404 law, the Corps would simply confirm that agreement and call the agreement a general permit." The price to achieve such agreement, which would obviously have teeth, was consensus among those parties who are normally in conflict over individual permit applications. In this way, the Corps moved beyond the role of technical evaluator of proposals to that of facilitator of consensus among the locally affected and interested parties. This is the innovative idea.

In both cases the Corps used its authority as a carrot. In both cases, the general permit was issued. Jacksonville district's Sanibel permit has held and operated with no challenges for five years, the legal life of such a permit. The Vicksburg district's permit has just been issued. Each case used neutral facilitators and four workshops over 2–3 months.

How did such competing interests get together? How could the Corps be perceived and neutral? What were the similarities and differences? What do these cases say about the emerging theories of negotiations?

Jacksonville District, Corps of Engineers, Sanibel Island General Permit

In 1980, Sanibel Island had a new city government. This government had emerged after two decades of debating home rule for the island. Because Sanibel is a unique environment, much of the debate revolved around protecting natural resources while maintaining a reasonable level of development. Consequently, Sanibel Island had developed a comprehensive land use plan (CLUP) which gained world-wide recognition as a pioneering attempt to relate growth to ecological limits. However, many properties that were purchased for sizable developments became zoned for minimal use. Some owners started taking grievances to court over their downzoning; others complained about the time required for approval. Overall, the newness of the city government, the unique quality of Sanibel's environment, and the CLUP created permit processing delays. By relying on individual permitting, the Corps compounded these delay problems.

When the Corps suggested a general permit, the mayor and other officials expressed interest because anything that speeded the permitting process might also reduce criticism of the city's CLUP. The city government however was dominated by environmentalists who generally were wary of the Corps and the possibility of a general permit. Initially, they viewed the workshop approach to general permits as a way to subvert their opportunities to review each permit. The position of the city despite early suspicion was to cooperate and be positive. Without a GP the Corps expected roughly 10–12 individual permit applications each year.

Developers were interested in an acceptable and more easily understood permitting process. They felt that a general permit would speed up permitting which had been troubled by delays. Special conditions for fill activities that everyone agreed upon and understood would work to the developers' advantage. But, they were also concerned that environmental interests on the island would dominate the workshops, and were skeptical about a process which changed the behind the scenes "business as usual." While officially supporting the workshops and a possible general permit, the developers limited their participation in the beginning.

Environmentalists, including the representatives of environmental groups as well as individual island residents unaffiliated with organizations, historically mistrusted the Corps. Much of the mistrust was based on negative perceptions of Corps flood control, dams, and other structures. Their interests would not be served by a permitting process which speeded up permitting to the detriment of the natural environment. However, the absence of a detailed set of criteria for granting permits was also working against their interests. Many developers and homeowners were building structures without obtaining necessary permits. So the environmentalists and developers shared an interest in a permitting process which spelled out special conditions for construction activities. They also shared an interest with the city in assuring that special conditions did not subvert the CLUP requirements. At the beginning, environmentalists were split; some were

adamantly opposed to a general permit on principal and others were willing to try developing special conditions.

Vicksburg District, Corps of Engineers, Hydrocarbon Drilling Permit

The proposed GP in the Vicksburg district was for hydrocarbon exploration drilling across Mississippi and Louisiana. Where Sanibel covered a small geographic area and a broad range of construction activities, the Vicksburg GP covered a broad geographic area and a specific activity. Across Mississippi and Louisiana, hydrocarbon drilling was bearing return rates as high as 98%. A little-used general permit, fraught with bad feeling among the environmental community, industry, and the Corps, had been in place for five years. It was not working well; in fact, it was a negative symbol. Some of the hydrocarbon exploration drilling covered by the GP was in the Washatu Fish and Wildlife Preserve which recently experienced oil spills and bird habitat destruction. Interestingly, Washatu was built from Corps land purchases resulting from previous fish and wildlife mitigation.

Environmentalists were ready to fight on every issue. The Corps of Engineers knew there would be problems and difficulties in issuing another general permit. The Sierra Club had already filed lawsuits.

Since the Corps could expect about 200 applications a year, the case-by-case review could require enormous staff time, produce delay costs to industry and encourage frustrating litigation. Nobody liked the Corps; some thought it was too weak, some thought it was too strong, and some thought the Corps didn't know what it was doing.

Vicksburg district wanted a workable general permit. The oil and gas industry felt that a GP would save time and money. The environmental community, which included local environmental interests along with national representatives of the Audubon Society and the Sierra Club, were opposed to a general permit. Their initial position was no general permit under any conditions. Their interests were basically to protect the environment and to save as many of the fish and wildlife lands as possible.

For the previous five years, most state agencies from Louisiana and Mississippi had maintained good operating relations with industry. One interested state agency, the Arkansas Water Quality Board, declined to participate. Since permit actions in areas covered by that agency amounted to less than 1% of total actions, loss of their participation was not fatal. The water quality board, oil and gas boards, and various fish and wildlife organizations from the state of Mississippi and Louisiana participated. At the federal level, the U.S. Environmental Protection Agency's (EPA) regions 4 and 5 and national interests participated. Initially, they showed little interest and no position other than curiosity. Three representatives from local and regional fish and wildlife organizations participated. Basically, their interest was to use Section 404 to control industry in the Upper Washatu Fish and Wildlife Preserve and across the rest of the states of Mississippi and Louisiana. While the states generally maintained better relations with industry than the federal government, there was no clear consensus on the threat to wetlands among state agencies. As the workshop process evolved the state representatives were key players in forging compromises.

Processes and Outcomes

Sanibel

A team of four consultants assisted Jacksonville in the design, implementation, and evaluation of the Sanibel process. In the month before the process began, consultants helped the Jacksonville staff review all Corps material and permit history on Sanibel Island. For example, there had been exchanges on the possibility of a general permit between the Corps and city hall, and preliminary language for special conditions had already been discussed. However, the district engineer felt it was important to widen public input. The consultants also carefully studied the Comprehensive Land Use Program (CLUP), along with the Corps jurisdictional responsibilities. An independent evaluator was chosen and was present at all planning sessions and throughout the process.

The most important preworkshop element was training the Corps facilitators. The Jacksonville district selected eight staff members to serve as facilitators. In a half day before the workshops began, the district engineer had given them two missions: to gain new skills from "on the job training" in a real situation, and to help the citizens reach consensus on necessary criteria for the general permit. Their job was to keep the workshop process moving without imposing their own values, judgments, or official expertise—a difficult task. The consultant's job was to prepare the facilitators for the group process and to allay their fears and insecurities by equipping them with basic group process and communication tools.

The first workshop drew roughly 50 people and lasted a day. At first some citizens announced that they were suspicious of the proceedings and even more suspicious of what a general permit would do to Sanibel's ecology. After the district engineer explained that everybody would be randomly assigned to one of six groups, the groups went off with their facilitators to "scope all the possible issues for general permit on the island." When the groups returned at around 3:00 p.m. the results were remarkable; reporters selected by the groups themselves delivered summaries that demonstrated major agreement on the basic problems to be solved. The experience of the small groups in discerning agreement moved many participants to see the process as a success and to allay their suspicions of the Corps.

At the second workshop, the Corps asked individuals to focus on their special concerns. Therefore, participants were not randomly assigned to groups but rather chose areas of expertise. The second workshop refined the large range of issues and began the detailed work of writing language for special conditions.

The third workshop was crucial because the special conditions had to be written at this time, so that the broader community could respond to the language of special conditions at a final workshop. Therefore, the Corps returned to a format where each of the small groups addressed all of the issues and language under consideration. Consensus was reached by the end of the day. It was clear that participants had been discussing the issues with their constituencies between the workshops; it was also clear that joint ownership of the GP was emerging and that finalizing the language would be straightforward.

The final workshop was primarily an explanation of the permit to all

interested parties. Because some citizens might not have previously participated, the Corps asked those who had emerged as leaders in the workshops to serve on a panel to answer questions from the floor. Since the citizens themselves had developed these special conditions, they were the ones to explain their work before their friends. In this way the Corps was not in a defensive posture and also demonstrated the joint ownership of the permit.

The give and take among the panelists and audience was easy and informal. The district engineer was there to answer the difficult procedural questions which the citizens could not address themselves. This meeting produced some minor changes in the language of the special conditions and much mutual and self congratulations.

Using the group's agreement, a public notice, or what is called a "green sheet," was issued. Only a few comments and no major protests were received. There was not a demand for a public hearing. After the language was changed slightly for a final permit, the GP was issued and held for five years.

Vicksburg

Like Sanibel, the recent Vicksburg permit used four meetings and the facilitation was done by Corps personnel. Also, like Sanibel, a consultant was hired to advise Corps personnel and to assist them at difficult moments during the process. Roughly 30 people participated in each of the workshops. These participants broke into two working groups which were equally balanced among the various interests. Five oil and gas industry representatives participated, one of whom was hired by the industry to professionally represent their interests. There were five representatives of environmental organizations along with various representatives of the state and federal agencies.

Like Sanibel, the period prior to the first workshop was critical. Lists of interested and influential citizens and officials were developed from past permit actions and from the general familiarity of the Corps personnel with the industry. Because suspicion and bad feelings were rampant, Corps administrators hired a consultant after they contacted the interested parties and before the first meeting. Based on their previous Corps public involvement training, these administrators felt that they and their supervisors needed refresher training on how to facilitate groups. The consultant was brought into the Corps district for one week to advise, help design, and reemphasize various aspects of group process techniques. The Corps wisely demanded that agency, industry, and environmental representatives possess the authority to negotiate for their agency or organization.

The first workshop, where much posturing and positioning occurred, was held at a central location. At that time the main group was divided into two groups to scope the issues and then narrow and refine them. The consultant was present at the first meeting and explained the consensus building process and the objectives of joint ownership. The consultant also explained how and where such processes had been successful in the past. At this meeting and others, Corps personnel were present to answer technically oriented questions and to assure that special conditions would remain within the broad legal authority of the Corps. Two Corps personnel facilitated both groups.

A second one-day workshop was held roughly four weeks after the first workshop. But, like Sanibel, it was the third workshop that proved crucial. At that time, a clear feeling of joint ownership over the scoping and content of special conditions emerged. However, a split between industry representatives and environmentalists also emerged, and one industry representative walked out. The Corps representatives thought they would lose the whole activity at this point. Two ad hoc committees, one focusing on mitigation and one on consolidation of the wording of the special provisions were formed from both groups.

At this point another important event occurred. The Corps facilitators switched into mediator roles. Because they had been acting as neutral facilitators, the group now accepted them as neutral. Between the third and fourth meeting, two Corps facilitators shuttled among industry and environmental representatives to refine the mitigation issues.

Now the facilitators began to look like mediators because they were caucusing, developing alternative proposals, and carrying them individually to the separate interests. Two agreements emerged from this process. First, participants agreed to an eligibility clause which said that applicants had to be "in compliance with other permits before operating under this general permit." Second, the word mitigation was dropped but a conservation initiative which involved $200 contribution by a permit applicant was added. This contribution would be earmarked for the purchase and preservation of wetlands in the state where drilling would occur.

At the fourth meeting all 30 participants remained as one group. The wording of the special provisions, the eligibility clause, and the conservation initiative were presented. After much discussion participants agreed to each. After mutual self-congratulations the special conditions were published in the "green sheet." Like Sanibel, only a few comments and no demands for public hearings were received. The general permit has recently begun.

Comparisons

What motivated agreement? In both cases, fostering joint ownership in the process assured that the permit would be implemented. In both cases, the Corps of Engineers helped the parties to understand that they all had something to gain from the general permit and that they had something to lose without a general permit. However, the bottom line was really time and money.

Environmental groups at Sanibel Island felt that a general permit, while it allowed more fill than they ideally wanted, also stabilized the situation. Therefore their resources could be freed to fight other more salient issues.

In Vicksburg, environmentalists felt the general permit could guarantee that their conditions would be met. If they went on a case-by-case permit basis, their ideas would be heard, but they were not as sure that their general conditions would be met. Also environmentalists were concerned about expending their limited resources and time fighting many of the 200 possible individual permits.

Industry and development interests also responded similarly in the Vicksburg and Jacksonville cases. For Sanibel, the question was time and money. While developers might not be able to build as much as they

wanted, getting permits within a few weeks and knowing which ones would be feasible over a five-year period was better than the uncertainty of a case-by-case approach. They could plan and avoid unnecessary delay costs. For Mississippi and Louisiana, the oil and gas industry also liked the idea of drilling within two weeks of an application. Also, if they did not want to comply, they could go to an individual permit.

State and federal agencies in the Vicksburg district case were also concerned over the time and resources their people could spend on individual permit applications. The consensus on special conditions meant that fewer people would be tied up in review and evaluation roles on individual permits.

So the motivations were similar, and they should surprise few. The important points are that the facilitation process encouraged the participants to go beyond their positions and to discover shared interests, and on the basis of shared interests, to negotiate the issues which became the specifications of the general permit. In both cases, this occurred because the Corps was able to separate process and content, to be accepted as a neutral party. One major difference is worth mentioning again. In Vicksburg the Corps moved beyond simply facilitating a discussion into actively mediating the content agreement. This is something new for the Corps and the dispute resolution literature.

In both cases, better working relationships among industry, the environmental community, and state agencies emerged. Nobody really likes the regulatory process. Those who carry out the regulatory process often feel like the messenger who is killed because he bears the bad news.

The processes adopted in these cases by the Corps brought all parties of concern into the shared ownership and responsibility for the respective GPs. In Sanibel, the Corps' independent evaluation actually measured positive attitude change toward the Corps. Interestingly enough, in both cases, Corps professionals felt that the general permits were stronger and technically more complete than anything the Corps would have been able to generate internally. Not only did the areas have more implementable permits, they also had better technical permits.

In both cases, many participants remarked that this was the first time they actually sat down and worked together. In Vicksburg, it was the first time that many had met. In both cases, greater mutual respect and understanding of the permitting process resulted. Both cases produced greater empathy, humanized the situations, reduced the stereotypes, and encouraged individuals to talk with each other rather than at each other.

Finally, both cases show the importance of training. Facilitation doesn't just occur. Personnel need to understand its principles and learn techniques. Training for Corps personnel was critical in both cases before the GP workshops began.

Lessons Learned: How Do These Experiences Fit Into Emerging Theory From the Field of Negotiations?

What do the lessons of these case say about negotiation? Let's look at 13 hypotheses from the emerging negotiation and alternative dispute resolution (ADR) field (Susskind 1985).

1. People bargain as long as they believe negotiations will produce an outcome as good or better than outcomes that would result from other methods. In the literature this is called BATNA: the best alternative to a negotiated agreement (Fisher 1981). This hypothesis is clearly supported by both cases. In Jacksonville, the district engineer might have tried issuing a general permit which would probably have been unsuccessful. Without the general permit the Corps would simply react to individual permit applications. In Vicksburg the district engineer would probably have issued a general permit. This would have intensified frustration and discontent over the permit process. In both cases the Corps might have been pulled into what we affectionately call the "Colonel Krammit methods," i.e., forcing the permits. Without the GPs posturing among fish and wildlife, environmental groups, industry, developers, and the Corps would not only continue but be encouraged. Finally, many individual permits would become lawsuits and end up in litigation. In both cases the Corps helped the interested parties understand that these alternatives, which were known at some level, would not be as good as a negotiated agreement alternative. Because the Corps acted neutrally, the parties were more easily able to see the possibility of a negotiated agreement. BATNA was important in these cases.

2. Issues must be readily apparent and parties must be ready to address them. This assertion, frequently found throughout the international negotiation literature, is often called "ripeness." These cases are inconclusive on ripeness. It is hard to argue that the Sanibel GP was ripe. Just the opposite, the idea of a general permit was novel. On the other hand, there was a history of general permits, bad feelings, and a fairly clear understanding of the issues and conflicts surrounding the Vicksburg GP. Since interested parties knew that the existing GP was terminating and a new GP likely, the Vicksburg case could be seen as ripe.

3. Success depends on having a large enough range of issues or options to either trade-off or to create new options (Susskind 1985; Raifa 1982). Both cases support this assertion. However, facilitation processes do not simply identify zero-sum trade-offs. They also encourage parties to create win-win possibilities beyond win-lose. They help parties to create options, which no one party thought of before the process began. This happened in both cases. The facilitation process enlarged the perspective of the parties so that entirely new positions were created.

4. Agreement is unlikely if parties must compromise fundamental values. Who could argue with this assertion? Both these demonstrate that while parties characterize their positions in fundamentally and unchanging value terms, their behaviors within different situations can be negotiated. It is not that the parties are dishonest or that they don't hold the values they espouse. Rather, parties discover that their interests can be substituted in different circumstances. In both the Sanibel and Vicksburg cases, the parties discovered that their basic values of environmental quality and development could be maintained with integrity. They discovered that they could define shared interests and negotiate agreements without giving up their basic values.

5. If power is unequal the parties will not negotiate. Parties must perceive interdependence and be constrained from acting unilaterally. Much research is needed to flush out this assertion because power has

many dimensions, e.g., knowledge, influence, and authority. Both Sanibel and Vicksburg demonstrate that parties do not always accurately assess their own power or that of those with whom they will be negotiating. The facilitated process helps parties mutually educate each other to their relative power. In these cases environmental groups had power of delay while industry had power of money and resources. However, agencies and environmental groups also had a certain amount of influence based on knowledge and a certain amount of authority based on public perception of their protecting public health and quality of life. These are only a few dimensions of power that become apparent in open forum discussions.

In some cases facilitation might equalize unequal power or empower those less powerful. Facilitation also helps the parties to understand that power is shared. After all, the fact that parties are negotiating or working collaboratively affirms that power is shared. One of the most exciting aspects of facilitation is that parties often come to understand that consensus or agreement equals power. They come to see that if people normally in adversarial positions can agree, that is power!

6. There is a rough practical limit in the numbers of participants, of around 15 parties (Creighton, et al. 1983). Much research needs to be done in this area. Neither the Sanibel nor Vicksburg case support this limit. The idea of 15 parties, which comes from regulatory negotiations literature, is really built on the optimal size of small working groups. However, as we have found with public involvement, large groups can be broken into small groups which can work effectively and then report back to large groups. In both Sanibel and Vicksburg small groups were used. As long as participants see that breaking into small groups is for going into detail and not for dividing and conquering, participants will accept the large to small to large group movements. Other experiences have shown such processes to work with over 100 people. The absolute limit is not supported and needs far more research.

7. The pressure for deadline must be present. This also is not supported in both Sanibel and Vicksburg. We all know that people tend to agree as the meeting time wains. However neither Sanibel nor Vicksburg had a necessary time limit. While each case used four workshops over 1–2 months, these were not necessary time limits. The necessity of time comes after the issuance of a "green sheet" or upon a demand for a public hearing. Of course public hearings were not demanded in either case because issues were negotiated before the public notice. Actually, the need for or even the possibility of a negotiated agreement was not known until the Corps raised the prospect.

8. Some means of implementing the final agreement must be available and acceptable to the parties. Mediation and negotiation literature repeatedly emphasizes this assertion. Both the Vicksburg and Sanibel reaffirm it. In both cases there was discussion and agreement on the procedures for monitoring and enforcing the general permit. Understanding that the special conditions and their enforcement are themselves tools by which the interests will be met was a crucial motivator in both cases. The actual content of these negotiations, the special condition for GPs, really became the tools of implementation.

9. Successful negotiation depends on mutual education (Lincoln 1986; Moore 1986; USCE 1986). Both cases support this. Sanibel documented

changes from negative to positive perceptions of the Corps as well as of the process. While not quantitatively documented, the same occurred in the Vicksburg case. In both cases, fear was reduced, and the parties came to see each other in a different light. This is not to say that participants came to agree with each other's positions. However, they did come to better understand their own interests, the relationship of issues to each other's interests, and their relative power. Having said this we must also remember that perfect information could just as easily be a perfect description of conflict. While better understanding of each other's interests and positions in both these cases led to inventing new options and to joint ownership of solutions and to mutual gain, this is not always true. However, mutual education is one of the keys to facilitating a collaborative problem-solving process.

10. Durable agreements depend on procedural, psychological, and substantive satisfaction (Lincoln 1986). Procedural, substantive, and psychological satisfaction are held out as the keys to durable settlements. They were clearly achieved in these cases. As already noted, psychologically participants saw each other in a different light and changed their views. One test of procedural satisfaction is: "Would you use the process again?" In both Sanibel and Vicksburg, participants recommended that the processes be used again. Substantive satisfaction was achieved in that participants felt their values were preserved while their interests of time and money were also satisfied.

11. Process can make a difference (Priscoli 1982, 1983). Both cases support this assertion. It is the point of this paper. Process made a difference in these cases because it separated people and problems, it separated interests and positions, and it helped parties to focus on the interests behind positions. Parties were able to bargain not over the positions, but over interests and understand possibilities of mutual gain. None of this would have occurred without a facilitation process.

12. Facilitators must be perceived as neutral parties to conflict. Perhaps this is truism, however it is affirmed in both cases. In the Vicksburg case, the Corps personnel, charged with permit responsibilities in the conflict situation, not only were neutral facilitators, but also became mediators. Since the Corps was legally mandated to play a role that looked neutral and acted neutrally, they were accepted as neutral, even though they play nonneutral roles in other arenas often involving the same parties. These cases indicate that the imperatives of role can, in certain circumstances, overcome historical perceptions.

13. Conflict can be positive (Coser 1956). Both Vicksburg and Sanibel bear out Coser's view that resolving conflict can produce positive benefits. Conflict is a relationship, something we often forget. It can be relationship building as well as relationship destroying. In both these cases the working environment was improved.

Summary

I have briefly examined two Section 404 general permitting cases and argued that facilitation, mediation, and collaborative problem-solving techniques can make a difference. Expensive adversarial battles can be avoided. Durable agreements can be reached among seemingly irreconcil-

able adversaries. Productive relationships can be built out of conflict. Mutual interests can be discovered among environmental, development, industrial, federal, private, and public interests. The cases outlined offer an approach to permitting that could be adopted by the federal government in other areas. In many instances, the federal government can decide to be a facilitator of agreement as opposed to the technical evaluator of, or advocate for, positions. Adopting such approaches can enhance partnership among state, local, and federal organizations.

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